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	Filing Date	March 21, 2001	
	First Named Inventor	Manfred PFALZGRAF	
	Group Art Unit	3612	
	Examiner Name	D. Pedder	
Total Number of Pages in This Submission		Attorney Docket Number	740123-351

ENCLOSURES (check all that apply)		
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Remarks		<input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees required or credit any overpayments to Deposit Account No. 19-2380 (740123-351) for the above identified docket number.

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Firm or Individual name	David S. Safran, Reg. No. 27,997 Nixon Peabody LLP 8180 Greensboro Drive Suite 800 McLean, VA 22102
Signature	
Date	April 30, 2004

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Attorney's Docket No. 740123-351

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of)
: Manfred PFALZGRAF) Group Art Unit 3612
: Application No.: 09/813,353) Examiner: D. Pedder
: Filed: March 21, 2001) Appeal No. _____
: For: MOTOR VEHICLE ROOF WITH)
: TWO COVERS)

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Angelique M. Graham

APPEAL BRIEF UNDER 35 CFR § 1.192

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Brief is submitted in furtherance of the appeal commenced by the Notice of Appeal filed on March 5, 2004, in response to the final Office Action mailed September 11, 2003, in connection with the above-captioned patent application.

Real Party in Interest

The assignee, Webasto Vehicle Systems International GmbH is the real party in interest.

Related Appeals and Interferences

There are no related appeals or interferences.

Status of Claims

All claims, i.e., claims 1-9, are pending in the subject patent application and the rejections all of these claims are appealed.

Status of Amendments

No amendments were filed subsequent to the final rejection. However, it is noted that, subsequent to the final rejection, a Petition was filed with respect to the Examiner's objection to the drawings and a declaration evidence was submitted and considered (see appended Declaration of Bernd Schleicher, hereafter, the "Schliecher Declaration").

Summary of the Invention

The invention relates to a motor vehicle roof with a roof opening 25 which is made in the fixed roof skin 10 with two successive adjustable covers 14, 15 for closing and partially clearing the roof opening. At least one of the covers may be pushed in the lengthwise direction of the motor vehicle into an open position (see, Fig. 2D for cover 15 and Fig. 3C for cover 14) and may be swiveled out of its closed position into its ventilator position (Figs. 2B & 3B). When at least one of the covers is longitudinally displaceable from the ventilator position into the open position in which said covers are vertically arranged with respect to each other, the rear edge of the cover is maintained at a constant height relative to the fixed roof skin during its longitudinal displacement, at least until a last section of the longitudinal displacement (See, height of rear edge 19 of the rear cover 15 in Fig. 2C). In the case of the rear cover 15, it is displaceable from the tilted ventilator position to under the front cover 14 which remains in the closed position by moving the rear cover forward with the rear edge thereof maintained substantially at the height of the fixed roof skin until the last section of the longitudinal displacement at which the rear edge of the rear cover is lowered to enable the rear cover to move completely under the front cover (Fig. 2D) so as to be located essentially parallel to the front cover 14.

The front cover 14 is displaceable rearward from the ventilator position (Fig. 3B) to an open position in which the front cover is located above and essentially parallel to the rear cover to a major extent (Fig. 3C).

The two covers are movably guided on lateral guides G on the roof frame of the roof opening. Furthermore, the roof has a retractable sunshade covering 28, 29 for the underside of the two covers.

Issues

Are the claims based on a description of the invention that is not enabling within the meaning of the first paragraph of 35 U.S.C. § 112?

Has adequate weight be accorded the Declaration of Bernd Schleicher and is the Examiner's unsupported opinion sufficient to overcome the evidence of that Declaration?

Grouping of the Claims

All of the claims can be treated as rising or falling together with claim 1.

Argument

The sole rejection of the claims involved in this appeal is that of all claims under 35 U.S.C. § 102, first paragraph as being based on a disclosure that is inadequate to teach one of ordinary skill in the art how to make and used the claimed invention. In particular, it is the Examiner's opinion that one of ordinary skill in the art would not be able to make a sliding roof that is capable of performing the claimed movements based solely on what has been disclosed by the present appellant coupled with that which was known in the art at the time that the invention was made without inventive effort. That is, it is the Examiner's view that without a disclosure of a specific mechanism which can perform the claimed movements,

since no prior art roof performs such movements, it would not be possible to determine how to produce a suitable mechanism capable of moving the roof covers as claimed.

The standard for determining whether the specification meets the enablement requirement was set forth in the Supreme Court decision of *Mineral Separation v. Hyde*, 242 U.S. 261, 270 (1916) as being whether or not the experimentation needed to practice the invention undue or unreasonable and as indicated by Federal Circuit, that standard is still the one to be applied. *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988). See also, *United States v. Telectronics, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988) ("The test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation."). A patent need not teach, and preferably omits, what is well known in the art. *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984).

Furthermore, the Court in *In re Wands*, *supra*, indicated that there are many factors to be considered when determining whether or not there is sufficient evidence to support a determination that a disclosure does not satisfy the enablement requirement and whether any necessary experimentation is "undue." Among these factors are:

- (A) The breadth of the claims;
- (B) The nature of the invention;
- (C) The state of the prior art;
- (D) The level of one of ordinary skill;
- (E) The level of predictability in the art;
- (F) The amount of direction provided by the inventor;
- (G) The existence of working examples; and

(H) The quantity of experimentation needed to make or use the invention based on the content of the disclosure.

However, the Examiner, in his rejection of the claims has made no attempt to evaluate any of these factors. Instead, the Examiner has merely identified differences between the structures which were known in art and that claimed by appellant and has noted that no specific movement mechanism has been disclosed by the appellant.

In contrast, appellant has provided declaration evidence which provides facts which bear directly on the above factors, as do the patents cited to the Examiner as evidence of the level of skill in the art, i.e., U.S. Patent No. 4,911,496 (see, Figures 2-5), U.S. Patent No. 4,911,497 (see, Figures 9-12, and 18-22; this patent has been incorporated by reference into amended paragraph nos. [0020] and [0023] of the present specification), and French Patent No. 2,730,958 (see, Figs. 2- 4). In this regard, the Board's attention is directed to the Federal Circuit decision of *In re Lange*, 209 USPQ 289, 294 (CCPA 1981) which held that:

the disclosure in question must be read in light of the knowledge possessed by those skilled in the art, and that knowledge can be established by affidavits of fact composed by an expert, [citations omitted] and by reference to patents and publications available to the public prior to appellant's filing date.

Viewing the above factors to be considered in evaluating the issue of enablement in light of the evidence provided by appellant and in the context of what has been disclosed and claimed, the following can be seen. Firstly, the breadth of the claims is specific as to a sunroof having a pair of slidable covers and as to the particular movements to be executed by the covers.

The nature of the invention is not in the general components of a sunroof or directed to creation of a particular new type of movement mechanism. Instead, the present invention is directed solving the problem described in paragraph [0002] of the present application in that prior art dual cover sunroofs, when moving between the open and closed positions, move along a path which takes up space between the top of the passenger compartment and the roof contour so that the head space in the vehicle back is reduced, resulting in a loss of usable space for passengers sitting in the passenger compartment. This is done, not by using special structure, but simply by the adaptation of known technology for the production of the claimed movements ("in the known manner," paragraph [0020]) by which the rear edge of the cover is maintained at a constant height relative to the fixed roof skin during longitudinal displacement at least until a last section of the longitudinal displacement, and then being lowered at its rear edge at the last section of the path of motion. This path of motion, with the

rear cover in a tilted position over most of the path of motion, ensures that the rear cover and especially its rear edge, as it moves into its open position, are guided on a path which keeps it as near as possible to the roof contour so that the head space in the vehicle back essentially is not reduced so that the passengers sitting in the back enjoy a more spacious vehicle interior. It is appellant's position that the invention is in recognizing what needed to be done, not in how it is to be done, implementation being a simple, routine matter for the person skilled in the art one that person knows what movements are desired, and those movements are clearly and fully set forth in the specification (see, e.g., paragraphs [0022] to [0026]).

As for the state of the prior art, roof mechanisms of the type in question are a highly developed mechanical art. The above-mentioned patent documents show various mechanisms for moving cover panels of sunroofs, raising and lowering them, tilting and sliding them. By way of example, the French Patent No. 2,730,958 ('958) patent (see, Figs. 2-4, elements 3, 4, 10, 11, 12a, 12b, 12, 13, 14, 15, 52) teaches one of ordinary skill in the prior art the well known means for effecting movement of an edge 4 of a front cover 10 out of the plane (upward) of the roof by pivoting around the other edge through cooperation of a cam surface 12a, 12b and lateral guide rails 3 to enable longitudinal movement of the front cover 10 (Figure 4) relative to the rear cover. Note, that the '958 patent teaches, like the instant application, that the trailing edge of the cover 10 can travel in the plane of the roof during a portion of the longitudinal movement (see Figure 3, element 12a) of the cover, but that, prior to completion of the longitudinal movement, the trailing edge of the cover must be moved (Figure 4, element 12b), like the leading edge, out of the plane of the roof to complete the longitudinal movement (and avoid contact with the trailing edge of the other cover). Note the similarity of the path of the trailing edges (Figures 2-4, element 12) and the path 27 of the trailing edge 19 of the instant invention (see Figure 2D).

Furthermore, in the Schleicher Declaration, the declarant, Bernd Schleicher, an inventor in this field himself, attests to the fact that the claimed movement "can be accomplished ... using known elements" and that he in fact was able to make and use the invention with known elements based on his knowledge and experience and based upon reading the application (see, last full paragraph of the first page of the Schliecher Declaration. The declarant explains in detail how such a mechanism comprised of known elements and concludes from his efforts that "the mechanism as described can be easily implemented and

provided on the vehicle roof in order to be used for moving the front cover 14 as described and claimed in the application without undue experimentation using known techniques based on the teachings provided by the PFALZGRAF Application.”

Moreover, with regard to the Examiner’s opinion that the fact that no one patent discloses a mechanism which could be used to produce the claimed movements and that the need pull-together elements from various sources demonstrates that inventive effort would be needed to produce a mechanism capable performing the claimed movements is incorrect. In particular, Mr. Schliecher states that:

such a conclusion ignores the fact that those working in the motor vehicle roof art to which the PFALZGRAF Application is directed routinely adapt movement mechanisms that perform one type of movement to produce another type of movement. Thus, given the structure shown in the PFALZGRAF Application and the type of movement to be provided, it would be nothing more than a routine matter to adapt known techniques to achieve the described movements, as my ability to quickly produce the arrangement shown in the appended figures evidences. (penultimate paragraph, last page of the Schliecher Declaration)

In response to the clear and unequivocal evidence provided by the Schliecher Declaration, the Examiner provided no evidence which contradicts Mr. Schliecher’s evidence that he was able to practice the invention “quickly” via routine adaptation of known techniques “without undue experimentation.” Instead, the Examiner, in his Advisory Action, merely summarily dismisses the Schliecher Declaration setting forth only the naked conclusion that it “only confirms the examiner’s position that extensive invention is necessary to complete the invention.” As pointed out above, the Federal Circuit has held that expert evidence, such as that provided by the Schliecher Declaration, can be used to establish “the knowledge possessed by those skilled in the art,” and it is submitted that such evidence cannot simply ignored without the provision of comparable contradictory evidence as has been done by the Examiner.

From the patent documents cited by appellant and the Schliecher Declaration, it can be seen that one of ordinary skill in the roof art to which the invention is directed have a high level of skill, and the mechanical elements with which such person works have a high level of predictability. That is, pivot levers, slides, cable pulls, cams and the like have been used for decades in various combinations and the behavior of such elements is fundamental and free

of unpredictability, e.g., if a downward force is applied to one end of a pivot lever, the other end will always move upward and a slider will always slide along a track if a force is applied parallel to the longitudinal direction of the track, but that movement can be prevented if a blocking element or locking element is applied. As pointed out in M.P.E.P. § 2164.03,

The amount of guidance or direction needed to enable the invention is inversely related to the amount of knowledge in the state of the art as well as the predictability in the art. *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970). The "amount of guidance or direction" refers to that information in the application, as originally filed, that teaches exactly how to make or use the invention. The more that is known in the prior art about the nature of the invention, how to make, and how to use the invention, and the more predictable the art is, the less information needs to be explicitly stated in the specification.

As pointed out above, the cited paragraphs of the specification provide clear guidance as to the specific movements to be produced and the timing thereof. Furthermore, the specification directs the reader to the types of "known" mechanisms that are usable both by reference to prior U.S. Patent 4,699,421 and by reference to types of elements, e.g., a swing-in mechanism, guide rails, a driving pinion and compressively-stiff drive cables to be used. Given the extensive knowledge about movement mechanisms that exists in the sunroof art and the high predictability of actions of the components used in such mechanisms, it is submitted that the guidance provided to those of ordinary skill in the art is adequate and enabling and this conclusion is fully supported by the Schliecher Declaration evidence.

Similarly, it has been held that a specification need not disclose a specific embodiment if the invention is otherwise disclosed in such a manner that one skilled in the art will be able to practice it without an undue amount of experimentation. *In re Borkowski*, 422 F.2d 904, 908, 164 USPQ 642, 645 (CCPA 1970), and the lack of a working example is normally only a factor to be considered in a case involving an unpredictable and undeveloped art which, as demonstrated above, is not the case for the motor vehicle roof art. Thus, given the high level of skill in the sunroof art, the predictability of the behavior of the types of components used in sunroof cover displacement mechanisms, and the clear direction given by appellant as to how the cover elements are to be moved, taken together with the declaration evidence that a working embodiment can be produced quickly without undue experimentation, the lack of a disclosure of a specific embodiment for producing the

disclosed and claimed movements should not adversely impact a finding that the disclosure of the present application is adequate to teach how to make and use the invention to an extent sufficient to support the claimed subject matter.

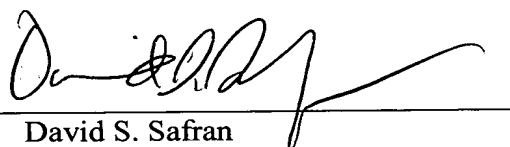
Thus, the above analysis of the factors that the Federal Circuit has held to be the proper means for determining the sufficiency of a disclosure to support claimed subject matter under the first paragraph of 35 U.S.C. § 112 clearly demonstrates that the Examiner has erred in concluding, with out evidentiary support or the required analysis, that the claims on appeal are not adequately supported by the disclosure of the present application.

Conclusion

Since it has been demonstrated the Examiner's rejection is inappropriate for the reasons set forth above, the Board is respectfully requested to reverse the Examiner's rejection as to all claims.

This Brief is being filed in triplicate along with authorization to charge the requisite Appeal Brief Fee to Deposit Account No. 19-2380 (740123-351).

Respectfully submitted,

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APPENDIX

1. A motor vehicle roof comprising:
a fixed roof skin with a roof opening therein; and
front and rear displaceable covers for closing and partially clearing the roof opening;
wherein at least one of the covers is displaceable in a lengthwise direction of the motor vehicle roof into an open position and is swingable out of a closed position into a tilted ventilator position in which a respective front edge thereof is lowered around a respective rear edge;

wherein said at least one of the covers is longitudinally displaceable from said ventilator position into said open position in which said covers are vertically arranged with respect to each other, said rear edge being maintained at a constant height relative to the fixed roof skin during said longitudinal displacement at least until a last section of the longitudinal displacement.

2. The motor vehicle roof of claim 1, wherein said at least one of the covers is the rear cover which is displaceable from the tilted ventilator position to under the front cover which remains in the closed position by moving the rear cover forward with the rear edge thereof maintained substantially at the height of the fixed roof skin until the last section of the longitudinal displacement at which the rear edge of the rear cover is lowered to enable the rear cover to move completely under the front cover.

3. The motor vehicle roof of claim 1, wherein the rear cover in the open position is located essentially parallel to the front cover.

4. The motor vehicle roof of claim 1, wherein said at least one of the covers is the front cover which is displaceable rearward from the ventilator position to an open position in which the front cover is located above the rear cover to a major extent.

5. The motor vehicle roof of claim 4, wherein the front cover is located essentially parallel to the rear cover in the open position.

6. The motor vehicle roof of claim 2, wherein the two covers are movably guided on lateral guides on the roof frame of the roof opening.

7. The motor vehicle roof of claim 6, wherein the rear edge of the rear cover is guided essentially at the height of the roof contour by said lateral guides over most of the path of movement into the open position.

8. The motor vehicle roof of claim 1, wherein the covers are transparent glass covers.

9. The motor vehicle roof of claim 8, wherein the roof has a retractable sunshade covering for the underside of the two covers.



Attorney's Docket No. 740123-351

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
	:	Art Unit: 3612
Manfred PFALZGRAF)	
	:	
Application No.: 09/813,353)	Examiner: D. Pedder
	:	
Filed: March 21, 2001)	
	:	
For: MOTOR VEHICLE ROOF WITH)	
TWO COVERS	:	

Declaration of Bernd Schleicher

I, Bernd Schleicher, hereby declare that:

As Manager R & D Roof Systems, being employed by "Webasto" since 1982 and working in the field of automobile engineering, I have gathered vast experience over the years in designing sliding vehicle roofs.

During my work in this field, I made inventions resulting in a number of patents, see, for example, U.S. Patent 4,699,421 relating to a sliding and lifting roof for vehicles, U.S. Patent 6,481,787 B1 relating to a sliding motor vehicle roof, U.S. Patent 6,457,770 B1 relating to a vehicle roof with adjustable covers and U.S. Patent 6,565,149 B2 relating to a vehicle roof with displaceable covers.

I have reviewed the specification and drawings of the above-identified U.S. Patent Application of Manfred PFALZGRAF (hereafter the "PFALZGRAF Application"). With my knowledge and experience, I am able to make and use the invention of the PFALZGRAF Application. The movement of the rear cover 15, for example, can be accomplished by means of a mechanism which I have designed using known elements based upon reading the application, this mechanism being shown schematically in the Figures 4, 5 and 6 of the enclosed figure sheet.

In order to move the rear edge 18 of the rear cover 15 (see claim 2 and claim 7 of the PFALZGRAF Application), a guide track follower, such as a roller or a pin 30 is carried by a support 31 mounted close to the rear edge 18 of the rear cover 15 and is movably guided along a lateral guide rail 32. This guide rail 32 has a main section 33 where the guide rail 32 follows the roof contour over most of its length and a front

section 34 where the pin 30 is moved downwards and forward on a lower level according to the representation of the arrow 27 (see Fig. 2D of the application).

For carrying and moving the front edge 17 of the rear cover 15 (see the movements of the cover according to claim 1), the mechanism has a swinging or lifting lever 35 which is supported by way of a pivot bearing 36 which, for example, is formed by a pin 36 which is arranged on an arm 46 of a slider 47 which is slidably mounted in a longitudinal guide rail 37 provided on a lateral roof frame. The lifting lever 35 has a front leg 38 and a back leg 39. The back leg 39 is hinged at its rear end to a support 40 mounted close to the front edge 17 of the rear cover 15. The front leg 38 is guided on its front end along a control guide rail 41 by way of a pin 42 (alternatively, a slider is movably guided along the control guide rail 39 and the front leg 36 is connected with the slider by way of a pivot bearing). The control guide rail 41 has a first control segment 43 which rises in a forward direction and passes into a main segment 44 which runs parallel to the longitudinal guide rail 37.

The slider 47, and thus the pin 36 of the lifting lever 35, is connected with a drive cable 45.

In the closed position of the vehicle roof the front edge 17 of the rear cover 15 (see Fig. 2A and new Fig. 5) is held in its position by the lifting lever 35 which has a swinging position such that the pin 42 of the front leg 38 is positioned in the lower end region of the control guide rail 41. When the drive cable 45 moves the pin 36 and thus the lifting lever 35 in a forward direction along guide rail 37, simultaneously the pin 42 is moved upwards along the first control segment 43 resulting in a pivoting movement of the lifting lever 35 until the pin 42 reaches the main segment 44 (Fig. 5 to Fig. 6). During a further forward movement of pin 36 and the pin 42 along the main segment 44 of the guide rail 41, the lifting lever 35 is kept in its pivoting position with the back leg 39 lowered. Simultaneously, the pin 30 of the rear edge 18 of the rear cover 15 moves along the lateral guide rail 32.

The arrangement for moving the front edge 17 is designed such that the front edge 17 moves downward and then forward as described in the application. In order to close the vehicle roof the drive cable 45 moves the pin 36 in rearward direction.

It is apparent that the mechanism as described can be easily implemented and provided on the vehicle roof in order to be used for moving the front cover 14 as

described and claimed in the application without undue experimentation using known techniques based on the teachings provided by the PFALZGRAF Application.

I understand that it is the Examiner's position that the differences in movements between the movement mechanism of U.S. Patent 4,911,497; U.S. Patent 4,911,497; and French Patent 2,730,958 and the invention of the PFALZGRAF Application are such that the picking and choose of aspects from them to produce a mechanism capable of performing the movements of the PFALZGRAF Application prevents them from evidencing that necessary movement mechanism could be made based on what is taught in the PFALZGRAF Application. However, such a conclusion ignores the fact that those working in the motor vehicle roof art to which the PFALZGRAF Application is directed routinely adapt movement mechanisms that perform one type of movement to produce another type of movement. Thus, given the structure shown in the PFALZGRAF Application and the type of movement to be provided, it would be nothing more than a routine matter to adapt known techniques to achieve the described movements, as my ability to quickly produce the arrangement shown in the appended figures evidences.

All statements made herein of my knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.


Bernd Schleicher

March 20104
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Encl.: Figure sheet with Figs. 4, 5 and 6

